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BEFORE THE
UNITED STATES SENATE
COMMITTEE ON INDIAN AFFAIRS

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IMPLEMENTATION OF THE NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT OF 1996

INTRODUCTION

Mr. Chairman, Mr. Vice Chairman, and Members of the Committee, thank you for inviting me to provide comments on the implementation of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA).

My name is Michael Liu, and I am HUD's Assistant Secretary for Public and Indian Housing. I am responsible for the management, operation and oversight of HUD's Native American programs. These programs are available to over 550 federally-recognized, and a limited number of state-recognized Indian tribes. We serve these tribes directly, or through their tribally designated housing entities (TDHE), by providing grants and loan guarantees designed to support affordable housing activities and viable community and economic development. Our clientele is diverse; they are located on Indian reservations, in Alaska Native Villages, and in other traditional Indian areas.

In addition to those duties, my jurisdiction encompasses the public housing program, which aids the nation's 3,000-plus public housing agencies in providing housing and housing-related assistance to low-income families.

It is a pleasure to appear before you, and I would like to express my appreciation for your continuing efforts to improve the housing conditions of American Indian and Alaska Native peoples. Although progress is being made to improve the housing conditions of Native American families residing on Indian reservations, on trust or restricted Indian lands and in Alaska Native Villages, much more needs to be done.

OVERVIEW

At the outset, let me reaffirm the Department of Housing and Urban Development's support for the principle of government-to-government relations with Indian tribes. Section 2, "Fundamental Principles," of Executive Order No. 13175, "Consultation and Coordination with Indian Tribal Governments," states:

“The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes.

“Our Nation, under the law of the United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, trust resources, and Indian tribal treaty and other rights.”

HUD is committed to honoring these fundamental precepts in our work with American Indians and Alaska Natives.

NAHASDA has been successful in changing the way Indian tribes conduct their housing business. Tribes and their tribally designated housing entities (TDHE) are no longer mired in a regulatory morass, complying with multiple, competitive, categorical programs, many with redundant requirements.

Today, tribes or their TDHEs submit an annual Indian Housing Plan (IHP). Once it is reviewed for compliance with the appropriate requirements, recipients can draw on their funds to engage in the eligible affordable housing activities they have outlined in their IHP. If they choose, they can use the Title VI Tribal Housing Activities Loan Guarantee Program to supplement their Indian Housing Block Grant (IHBG) funds.

At the end of a grant year, results are reported in the Annual Performance Report. We conduct monitoring and oversight remotely, with periodic on-site visits. Training and technical assistance is available both from HUD and our partners through a variety of media.

You will hear testimony that improvements need to be made, both to the program and to our management of it. We will work with our clients, and we are listening to their suggestions on how to improve the program. As an example, we met last July in Saint Paul, Minnesota for several days of tribal consultation. Some tribal leaders expressed their dissatisfaction with how we wished to implement certain aspects of the most recent NAHASDA amendments. We listened, and affirmed that many of those amendments could be implemented, after consultation, by administrative means through a Public and Indian Housing Notice, rather than by other, more time-consuming methods. In other instances, such as revision of the IHBG allocation formula, we determined that it was necessary to establish a negotiated rulemaking committee for that specific purpose.

I believe that although we may disagree on certain procedural matters, we do not disagree that this program provides unprecedented, fundamental improvements in how tribes and TDHEs plan and execute their housing programs and projects. The results of those improvements are more homes for low-income Native American families.

TRIBAL CONSULTATION POLICY

The Department has had a Tribal Consultation Policy since June 26, 1994. The Policy was put in place in response to an April 29, 1994 Presidential Memorandum to Heads of Federal Agencies on "Government to Government Relations with Native American Tribal Governments." HUD has honored the spirit and the intent of that policy.

On May 14, 1998, Executive Order (EO) No. 13084 was issued on the same subject. To ensure compliance with that EO, the Department developed revised draft consultation policies. We first engaged in consultation with tribes on a draft of our proposed policy in March, 1999. At the request of tribes, we subsequently rescinded the draft policy, revised it again, and reissued it in July of 1999. From September 1999 to February 2000, we sponsored eight regional consultation sessions and a final national consultation session in Washington, DC on the policy. We continued to discuss it with tribal leaders into the Fall of 2000, when another, similar EO, No. 13175 (November 6, 2000) was issued. Meetings were held among all federal agencies and White House staff to set direction and ensure consistency for the federal-tribal consultation policies. Further discussions were held with tribal leaders and within the Department, culminating in the issuance of the Department's revised Tribal Government-to-Government Consultation Policy, which was signed by Secretary Martinez on June 28, 2001.

The Secretary's revised policy contains a new and important provision, the authority to create an advisory committee made up of tribal leaders to provide advice on how to proceed with tribal consultation matters. Discussions are underway on establishment of that advisory committee, and I will be making some announcements regarding the committee in the near future.

TRIBAL CONSULTATION AND NEGOTIATED RULEMAKING

On December 27, 2000, amendments to NAHASDA were signed into law. Early in calendar year 2001, HUD again held a series of eight regional consultation sessions for the express purpose of hearing tribal priorities and proposed solutions to issues surrounding the implementation of NAHASDA, including how to proceed with implementing the amendments. All written and oral comments received from all sessions were then collated and distributed to every tribe and TDHE in the country. We asked tribes to comment on those sessions and on the written materials, and we asked our clients to establish 10 priority national issues for discussion at a subsequent national tribal consultation session, which was held in July of 2001 in St. Paul, Minnesota.

Indian housing leaders are aware that our tribal consultation policy provides for the use of a broad array of mechanisms, from tribal, regional and national forums to notice-and-comment rulemaking to negotiated rulemaking, depending on the nature of the issue to be discussed, the need for rapid response, and other factors.

Many tribal leaders participated in discussions on how to implement both the amendments and the 10 national priority issues. A number of attendees were opposed to any implementation of any regulatory change without negotiated rulemaking. Others offered suggestions across the entire range of consultation possibilities that are available under the policy.

In response to the comments we received in St. Paul, the Office of Native American Programs constructed a consultation document with suggested methodologies to implement all the NAHASDA amendments. We mailed the document to all tribal and Indian housing leaders on November 28, 2001, asking for their comments by the end of December. At the request of the National American Indian Housing Council and others, we subsequently extended the deadline for comments to February 11, 2002. Our next steps include reviewing those comments and providing feedback on how we will proceed.

A good example is the NAHASDA amendment concerning the establishment of tribally-determined wage rates in lieu of Davis-Bacon wage rates. Consensus was reached at the St. Paul consultation session on this subject. Participants agreed that it should be implemented as quickly as possible. The November 28, 2001 Tribal Consultation Document states that a regulatory change is required, and that the Department will engage in tribal consultation on that regulation. The Office of Native American Programs has been working with HUD's Office of General Counsel and the Office of Labor Relations to develop a draft regulation. All written and oral comments received at the regional and national consultation sessions were considered when drafting the proposed regulation. The draft will be released soon, asking for tribal feedback.

Should the Committee so desire, we will keep you informed of our progress on this and all other tribal consultation matters.

FORMULA ALLOCATION NEGOTIATED RULEMAKING COMMITTEE

NAHASDA's Indian Housing Block Grant Program regulations provide, in 24 CFR 1000.306, that the IHBG allocation formula shall be reviewed within five years after issuance, which would be in March, 2003. Recent statutory amendments to NAHASDA make several changes to the formula. HUD believes that this is an appropriate time to begin review of the formula, both to implement the statutory changes and to hear from our clients about whether they believe other revisions should be made. We also believe that, pursuant to HUD's Tribal

Consultation Policy, the formula allocation issue is of sufficient magnitude to require negotiated rulemaking.

In July of 2001, we published a *Federal Register* Notice requesting nominations and establishing the minimum qualification criteria for membership on that committee. We received 44 nominations. Approximately half of the nominees were missing one or more pieces of required information. To give nominees every opportunity to comply, in November, 2001, we wrote to all nominees, informing those that had provided all the necessary information that they would be considered, and notifying others that they were missing one or more of the items required. To date, we have received replies from approximately one-third of those with deficient applications.

There may be good reason for this. As the Committee is all too aware, after September 11th, our mail service has experienced significant delays. For example, one nominee mailed his reply to us on December 12th. We received it on January 23rd. As a result, we are being extremely flexible on accepting information. We are also preparing for publication a follow-up *Federal Register* Notice, announcing the names of the successful nominees. It is important to note that they remain nominees; no committee members have been selected yet. We did not receive, in our estimation, a broad enough geographic distribution of nominees. Therefore, this Notice will give tribes another opportunity to add to the list of potential participants. If a nominee is not listed in the next Notice, it means that they either did not reply to the request for additional information, or the information they provided was insufficient. They may also reapply under that Notice. Once the second round of nominees has been submitted, the Department will again review each nominee's information to ensure it is complete, notify those with deficient applications as well as those with complete applications, and then make final decisions. We will solicit the assistance of our partners in the selection process.

INDIAN HOUSING BLOCK GRANT PROGRAM AND ACCOMPLISHMENTS

The Indian Housing Block Grant Program

The Office of Native American Programs (ONAP) has developed an internal review process that ensures that the Indian Housing Plans (IHP) submitted by recipients for the Indian Housing Block Grant (IHBG) Program are reviewed in accordance with section 103 of NAHASDA. In the four years since the award of the first grant under this innovative program, HUD has successfully managed this new block grant by funding 368 recipients representing 552 tribes in Fiscal Year (FY) 1998; 356 recipients representing 527 tribes in FY 1999; 364 recipients servicing 528 tribes in FY 2000; and 307 recipients serving 531 Indian tribes in FY 2001. In FY 2002, there are a total of 583 potential tribal grantees eligible for a total of \$641,122,812. This represents a substantial increase in the number of clients that ONAP has assisted since the transition from the programs administered under the United States Housing Act of 1937. Under the 1937 Housing Act, ONAP provided assistance to only approximately 200 Indian Housing Authorities.

NAHASDA encourages tribes to develop and operate affordable and innovative housing programs based on local needs. Housing needs most often addressed in the IHPs are new housing construction, rehabilitation and modernization of existing housing stock, infrastructure to support affordable housing, crime prevention, elderly homes, congregate housing and housing counseling. NAHASDA has also provided tribes with the ability to develop new affordable housing efforts that were not eligible under the 1937 Act, including down-payment and other mortgage assistance programs, transitional housing, spousal abuse shelters and revolving loan funds. The result has been an increase in housing opportunities for many eligible tribal families throughout the country. NAHASDA is also being used in many cases to leverage funds for affordable housing.

In addition to the review of plans, ONAP administers the IHBG formula developed by the Negotiated Rulemaking Committee to allocate NAHASDA funds. Each year, ONAP reviews over 120 challenges and corrections to the NAHASDA funding formula. Since FY1999, ONAP has worked diligently to address formula challenges and corrections for the purpose of correcting the data used in developing the formula allocation for each tribe.

ONAP has established a toll-free hotline so that tribes and TDHEs can receive immediate assistance with formula allocation questions and problems.

As mentioned earlier, ONAP will be convening a negotiated rulemaking committee this year to re-examine the formula, pursuant to the requirements contained in 24 CFR 1000.306. This regulation states that the IHBG formula can be modified by developing a set of measurable and verifiable data directly related to Indian and Alaska Native housing needs; determining if NAHASDA units should be included under Formula Current Assisted Stock (FCAS) or other changes that may be needed with respect to funding under the FCAS component of the formula; and/or, reducing the Section 8 units by the same percentage that the current assisted rental stock has diminished since September 30, 1999. The goal of the committee will be to determine if the formula should be modified, and if so, how.

Investment of Indian Housing Block Grant (IHBG) Funds

The NAHASDA regulations authorize a recipient to invest grant amounts in securities and other obligations of the United States for the purposes of carrying out affordable housing activities. This provision was negotiated with tribes during the rulemaking process and can be an important component of a tribe's IHBG Program. However, we have found that many recipients have not taken advantage of this flexible regulatory provision.

In FY 1998, the first year of the program, a recipient could invest up to 50 percent of its IHBG annual grant formula amount (minus the operating subsidy element of the FCAS component of the formula). In FY 2001, a recipient could invest 100 percent of this amount.

In order to invest, recipients only need to demonstrate that there are no unresolved significant and material audit findings or exceptions in the most recent audit and that it is either a self-governance tribe or it has the administrative capacity and controls to manage the investment.

From FY 1998 through FY 2001, \$1.48 billion was available for investment. To date, 42 recipients have been approved for investments with a total request of \$272.3 million, or 18 percent of the amount eligible for investment. There were 10 disapprovals for various reasons.

We continue to encourage recipients to take advantage of this opportunity to invest funds in order to provide affordable housing to their members.

OVERSIGHT AND MONITORING

Self-Monitoring

The Department views the responsibility for program oversight as critical to the success of NAHASDA. The responsibility is not the Department's alone but is shared with all tribal governments. The Act and the program regulations require tribes to periodically review their programs for compliance with the requirements of the Act and to report to its constituents and HUD on their performance. HUD has developed a self-monitoring guidebook and is providing training programs to assist tribes in addressing this responsibility. HUD reviews of a tribe's performance are targeted toward the design and implementation of the tribe's self-monitoring program. Where a quality self-monitoring program is in place, we are assured that a tribe is complying with the requirements of the Act.

HUD Monitoring

The Department has spent a good deal of time and energy developing a monitoring process that both meets the oversight responsibilities of the Federal Government and is sensitive to our special relationship with tribal governments. Using Annual Performance Report information provided by grant recipients, audit reports, and internal reports on the expenditure of grant funds, an Overall Assessment Report is prepared for each participating tribe. This Report is provided to the tribal leadership and summarizes the strengths and weaknesses of the tribe's housing program implementation. This is primarily a feedback tool that provides information to tribal decision-makers on what is working and what improvements are needed in their housing delivery system.

To identify tribal housing programs for on-site monitoring by HUD staff, a risk-based approach has been developed. Using the information gathered through the Overall Assessment process, the Department identifies those grant recipients who pose the highest risk of loss of

grant funds or failure to meet the requirements of the Act. Upon completion of on-site monitoring, a report is issued to the tribal government, which provides recommendations for addressing statutory or regulatory violations. Where appropriate, HUD provides technical assistance to the tribe to correct identified deficiencies. Since the beginning of calendar year 2000, 167 review reports have been issued covering approximately 45 percent of IHBG recipients.

Tribal Performance

On-site monitoring results indicate that, for the most part, tribes are establishing housing programs that meet the needs of their tribal members and that are complying with program requirements. Because NAHASDA changed the responsible entity for housing grants to the tribal government, and with the expansion of grant recipients to include many tribes who had not previously received HUD assistance, performance issues occur at a higher incidence than may exist as the program matures.

In analyzing the findings contained in monitoring review reports, by far the most prevalent issue is the establishment of financial systems, fiscal management, and internal controls. The second and third most frequent performance deficiencies are in the areas of procurement/contract administration and the adoption and implementation of required admissions, occupancy, and management policies. Tribes are addressing these issues with HUD assistance or through third-party contractors. Since the inception of NAHASDA, HUD has found it necessary to initiate the sanctions process for nine grant recipients, and has imposed sanctions for three tribes.

A pressing concern for the Department is the high number of tribes that have chosen not to complete and submit to their tribal members and HUD an Annual Performance Report as required by the Act. Currently, there are 108 grant recipients or approximately 29 percent of all participants who are 60 days or more past the end of their reporting period who have not submitted a complete and accurate APR. A number of grant recipients have not prepared an APR for several years. The impact of this failure to provide required reports is a lack of information to evaluate program performance for these grant recipients and, for the program as a whole, an inability to develop complete, meaningful accomplishment data for Congress or the Department. The Department has stopped funding to five tribes and is processing sanctions for a number of additional tribes. HUD continues to look for solutions, but it is unlikely that this performance issue will be resolved without a higher level of compliance by tribal governments.

Audit of NAHASDA Implementation

In August, 2001, the HUD Inspector General for Audit (IG) issued a report on the implementation of NAHASDA. The report supported a number of the performance issues identified in our monitoring of recipient performance and provided reasonable recommendations for addressing the identified problems. Findings of the report included over-reporting by tribes

of existing housing stock resulting in excessive funding formula amounts; a lack of understanding by recipients of program requirements; failure to adopt and implement required policies; inadequate financial management practices, and failure to obtain financial audits. HUD and the IG have agreed upon actions to be taken to resolve these issues and expect to complete the actions within calendar year 2002.

TECHNICAL ASSISTANCE AND TRAINING

The passage of NAHASDA and its implementation through the program regulations developed by the Negotiated Rulemaking Committee challenged tribes and ONAP staff to create a new atmosphere of consultation and coordination. Asking tribes to adopt procedures to become the direct housing provider was vastly different from their prior role as an indirect oversight entity. More intensive, hands-on training was needed for ONAP staff, tribes and their housing entities to meet those challenges. ONAP is in the final stages of accomplishing these objectives and is preparing to move into the second stage of its training and technical assistance plan. On-site technical assistance will be provided on a larger scale to assist those grantees that are experiencing problems in one or more facets of the implementation of NAHASDA and/or other grant programs.

Accomplishments

In the past year, the following training sessions have been held for grantees, ONAP staff, and other interested parties:

- NAHASDA Essentials (a basic course on the Indian Housing Block Grant program)
- Indian Housing Plan Preparation and Submission
- Annual Performance Report Preparation and Submission
- Board and Tribal Roles and Responsibilities
- Mold Prevention
- Environmental Review Requirements
- Construction Contract Management
- Financial Management
- Basic Financing and Leveraging
- Advanced Financing and Leveraging
- Procurement
- Grants Monitoring Business Processes
- Indian Community Development Block Grant
- Homeownership Summit Seminars

In FYs 2000 and 2001, ONAP continued to work on improving the IHP review requirements and opening further channels of communication between our staff and our grant recipients. Additional staff training is scheduled for April 2002. We continually work with staff to ensure that the 60-day statutory deadline for IHP review is met.

There was continued outreach and training to increase homeownership opportunities in Indian Country, including the issuance of the final report of the One-Stop Mortgage Center Initiative in Indian Country in October 2000, which represents the recommendations of the task force partners. ONAP staff also continue to participate in conferences around the country to promote the Section 184 Loan Guarantee Program.

Under the Title VI program, the contractor completed their activities to provide direct technical assistance and capacity building to NAHASDA grantees. As a result of this outreach, six Title VI projects have been approved through October, 2001. ONAP will provide training sessions on this program during FY 2002.

Staff training opportunities were expanded significantly, utilizing some innovative training vehicles. By accessing training through the Internet and video and audio libraries, individual development at all grade and skill levels has been made available to ONAP staff.

A Tribal Technical Assistance and Training (TTAT) Center has been established on the Internet to provide a central location for tribes and TDHEs to request technical assistance in program planning, development, and management. The TTAT Center maintains a training calendar and provides training and technical assistance products. We also have an information clearinghouse to disseminate crime prevention and public safety materials.

ONAP has also developed many technical assistance products that have been made available to grant recipients on the Internet or through distribution of CD-ROMs. Some of the latest products include:

Mold Prevention and Detection: A Guide for Housing Authorities in Indian Country: a resource guide with the procedures for addressing mold and moisture problems in the home, with survey information gathered from tribal housing entities and occupants. The guide offers advice on addressing mold conditions and identifying partners to help resolve this problem.

Self-Monitoring Assessment Guidebook: a guidebook providing IHBG recipients with guidance on conducting self-monitoring compliance assessments as required under NAHASDA. In addition, the material goes beyond providing guidance on complying with the requirements, it includes suggestions and recommended management practices to make the grantee's IHBG activities successful and sustainable.

ONAP Online Training Modules: a web-based training tool that allows users to learn whenever they want, at their own pace. The online training currently includes basic level modules on housing finance, procurement, homeownership, financial management, construction management, and property management. Three additional topics and an upgraded system should be released this spring.

The Guide to Creating a Nonprofit Homeownership Entity: a resource guide for launching a nonprofit with the mission of promoting homeownership opportunities. The guide leads the user through the planning stages, the legal creation of an entity, the application process for Internal Revenue Service 501(c)(3) status, the development of the organization, and program operations.

Training and Technical Assistance Goals and Objectives for FY 2002

Based on a survey of technical assistance needs identified by ONAP's Area Offices, ONAP has begun providing intensive on-site technical assistance to tribes and TDHEs. The focus of the technical assistance is concentrated in the following major areas:

- Mold and Moisture Prevention
- Internal Controls
- Housing Management
- Financial Management
- Occupancy
- Procurement and Contracting
- Environmental Reviews
- Public Safety
- Grant and Program Administration

In addition, ONAP will continue to develop and provide training sessions to improve grantee performance and understanding:

- Self-Monitoring
- Conversion to GAAP Accounting
- Homeownership (Section 184) in Indian Country
- Economic Development in Indian Country
- Mold and Moisture Prevention and Remediation
- NAHASDA Essentials
- Indian Housing Plan Preparation and Submission
- Annual Performance Report Preparation and Submission
- Environmental Review Requirements

ONAP continues to hold an annual Homeownership Summit, publish quarterly issues of ONAP's newsletter *Dream Catcher*, and add to and improve our Internet presence with the website *Codetalk*.

TITLE VI TRIBAL HOUSING ACTIVITIES LOAN GUARANTEE PROGRAM

The last 18 months have seen the first loans guaranteed under the Title VI program. This initiative allows better tribal access to capital markets to provide infrastructure and affordable housing. Over \$14 million in guarantees have been provided by banking partners to Native American communities.

These loans have provided much-needed rental housing to remote Alaska Native Villages and funded an ambitious master-planned community for the Catawba Indian Nation of South Carolina. The Salish & Kootenai Tribe of Montana purchased an existing mobile home park and completed upgrades to its water and sewage system. The Native American-owned Chippewa Valley Bank assisted the Lac Courte Oreilles Band with a 40-unit project that combined HUD's Title VI guarantee with grants from the Federal Home Loan Bank of Chicago.

The Federal Home Loan Bank (FHLB) of Seattle committed in September of 2001 to purchase HUD-guaranteed Title VI loans from its member banks. Partnering with the ONAP Office of Loan Guarantee, FHLB staff produced letters and information packets for their member banks and held meetings, in conjunction with ONAP, in Wyoming and Alaska. The Seattle Bank's region is home to half of the tribes in the United States and their strong statement of support will continue to assist HUD's effort to provide financing to tribes and tribal organizations under the Title VI Program.

These innovative strategies can be replicated by lending and tribal partners to further improve the housing conditions for American Indian and Alaska Native peoples.

NATIVE HAWAIIAN HOUSING

I am very excited about the recent passage of legislation creating a new Title VIII under NAHASDA. We may now serve those Native Hawaiian families who are eligible to reside on the Hawaiian Home Lands with two new programs: the Native Hawaiian Housing Block Grant Program and the Native Hawaiian Housing Loan Guarantee (Section 184A) Program. In President Bush's FY 2003 Budget, we have requested funding of \$10 million and \$1 million respectively, under accounts completely separate from NAHASDA's Indian Housing Block Grant and the Section 184 Indian Housing Loan Guarantee Fund. I am pleased to inform you that the Department will soon publish an interim rule for public comment. Current-year grants can be released for use following the submission of the appropriate Housing Plan.

CONCLUSION

Finally, let me state for the record that this Department supports the passage of S. 1210 and H.R. 1873, bills which would reauthorize NAHASDA.

This concludes my prepared remarks. I would be happy to answer any questions you may have.